

SURPLUS LAND – AB 2135 FACT SHEET

PUBLIC LAND FOR PUBLIC BENEFIT - NEW OPPORTUNITIES FOR AFFORDABLE HOUSING PRODUCTION

Authored by Assemblymember Phil Ting (D- San Francisco), NPH's AB 2135 was signed into law at the conclusion of the state legislative session in 2014. The bill amended Government Code Section 54220 and the following to strengthen affordable housing's Right of First Refusal (ROFR) when local agencies, including cities and counties and special districts such as transportation authorities and school districts, dispose of publicly-held land. Ensuring the development of affordable homes near high quality transit stops and stations is a critical best practice to ensure equitable development and increase transit ridership.

BACKGROUND ON THE STATE SURPLUS LAND STATUTE

California Government Code Section 54221(b) defines surplus land:

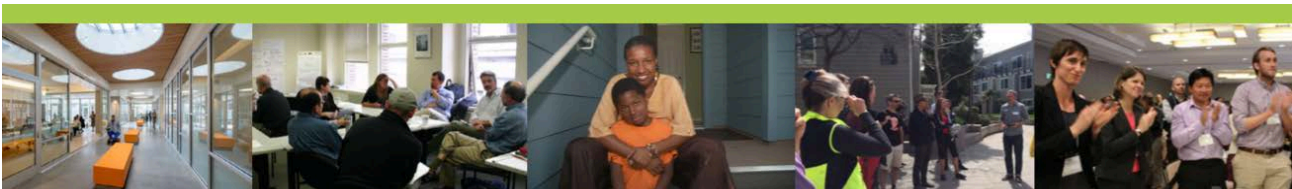
As used in this article, the term "surplus land" means land owned by any agency of the state, or any local agency, that is determined to be no longer necessary for the agency's use, except property being held by the agency for the purpose of exchange.

California Government Code Section 54221(a) defines "local agency" to include counties, both charter and general law cities and special districts such as school districts and transit agencies:

As used in this article, the term "local agency" means every city, whether organized under general law or by charter, county, city and county, and district, including school districts of any kind or class, empowered to acquire and hold real property.

California Government Code Section 54223 clearly states that the surplus land statute applies to land that is to be sold or leased:

After the disposing agency has received notice from the entity desiring to purchase or lease the land, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the price or terms cannot be agreed upon after a good faith negotiation period of not less than 90 days, the land may be disposed of without further regard to this article, except that Section 54233 shall apply.



California Government Code Section 54226 clarifies that a local agency can write down the cost of land as a way of providing additional subsidy to build more deeply income-targeted projects: **This article shall not be interpreted to limit the power of any local agency to sell or lease surplus land at fair market value or at less than fair market value, and any such sale or lease at or less than fair market value consistent with this article shall not be construed as inconsistent with an agency's purpose.**

California Government Code Section 54220(c) clearly states that writing down land costs is in line with optimal transportation use goals:

The Legislature reaffirms its declaration of the importance of appropriate planning and development near transit stations, to encourage the clustering of housing and commercial development around such stations. Studies of transit ridership in California indicate that a higher percentage of persons who live or work within walking distance of major transit stations utilize the transit system more than those living elsewhere, and that lower income households are more likely to use transit when living near a major transit station than higher income households. The sale or lease of surplus land at less than fair market value to facilitate the creation of affordable housing near transit is consistent with goals and objectives to achieve optimal transportation use. The Legislature also notes that the Federal Transit Administration gives priority for funding of rail transit proposals to areas that are implementing higher-density, mixed-use, and affordable development near major transit stations.

PROVISIONS OF THE STATE SURPLUS LAND STATUTE AS AMENDED BY AB 2135

(SOURCE: STATE SENATE FLOOR ANALYSIS 8/6/14)

- Extends from 60 to 90 days the good faith negotiation period between the local government and a preferred entity
- Requires an entity seeking to exercise the preference for affordable housing purposes to agree to make available not less than 25% of the units in the development at an affordable housing cost to lower-income households - those earning 70% of the Area Median Income (AMI) or below. Rental units must remain affordable and occupied by eligible households for 55 years. Ownership units must be subject to an equity sharing agreement. These requirements must be recorded against the property and are enforceable by the local government or eligible residents.
- Provides, with respect to the priority among competing offers from preferred entities, that if there are competing affordable housing offers, priority shall go to the project that proposes the greatest number of affordable units at the deepest level of affordability.

- Allows, with respect to properties sold or leased to preferred entities for affordable housing purposes, the payment period to exceed 20 years, provided that the payment period does not exceed the term of affordability of the housing units.
- Deletes the provision stating that existing law does not empower a local government to sell or lease surplus land at less than fair market value and instead adds any sale or lease at or less than fair market value consistent with an agency's purpose.
- Requires properties sold outside the preference system that are developed with 10 or more residential units to include at least 15% of the units in the development at an affordable housing cost to low-income households. Rental units must remain affordable and occupied by eligible households for 55 years. Ownership units must be subject to an equity sharing agreement. These requirements must be recorded against the property and are enforceable by the local government or eligible residents.
- This inclusionary requirement does not run afoul of the Palmer decision because it is a condition of sale and not a condition of project approval

WHAT YOU CAN DO TO MAKE SURE THE STATE SURPLUS LAND STATUTE IS FOLLOWED

- Push cities and counties to adopt local ordinances and transportation authorities to adopt resolutions and policies that cite the state statute and commit their agencies to follow the law and make available for affordable housing publicly-held land no longer needed for agency use
- Send letters to local jurisdictions, agencies, authorities, and special districts requesting notification when surplus land becomes available for disposition
- Work with local and regional transit, environmental, and social justice advocates to ensure local agencies follow the state statute and adopt local ordinances and policies that commit them to following the law and ensuring that public land provides public benefits